IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4644 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NB SHRIMALI

Versus

DEPUTY CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 4644 of 2005

MR PARESH UPADHYAY for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/04/2005

ORAL JUDGEMENT

RULE. Mr.Hasurkar, learned AGP, waives service of notice of rule on behalf of the respondents. At the

joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

In the present petition, the petitioner has challenged orders dated 17th January, 2005 and 14th February, 2005. Combined effect of these two orders is to seek and effect recovery of Rs.1,06,164/- from the petitioner. The recovery is sought on the premise that the petitioner had disregarded the directives of the higher authorities and permitted certain tenderers to lift fruits and fodder from the lands belonging to the Government without payment of full agreed amounts. It is the case of the respondents that the petitioner was cautioned against such permission being granted to the tenderers, however, ignoring the same the petitioner permitted the parties to lift the fruits and fodder. Ultimately, the parties defaulted in making payment, which caused loss to the Government, hence recovery.

Learned counsel for the petitioner challenged the impugned action of the respondents mainly on two grounds. Firstly, it is contended that the order of recovery is sought to be passed and effected without giving any opportunity of being heard to the petitioner. It is contended that the petitioner is not responsible for causing any loss to the Government. It is contended that if the sufficient opportunity was granted to the petitioner, he would have been able to demonstrate before the authorities that no recovery should be made from his salary. Second ground of challenge is that on the very same allegations, the respondents have issued a charge sheet to the petitioner on 16th August, 2000. It is stated that said proceedings have not yet been concluded. In fact, it is the say of the petitioner that his higher authorities have recommended dropping of the charges against the petitioner. Disciplinary authority has yet to take a decision in this regard.

It is not in dispute that no show cause notice or any other form of opportunity was given to the petitioner before passing impugned orders, Annexures A and B. Whatever material may be in the possession of the Government, the same was unilaterally collected and relied upon without disclosing the same to the petitioner or without giving him any opportunity to meet with the same. The order of recovery of alleged loss caused to the Government would certainly result into adverse civil consequence against the petitioner and no such order should have been passed without giving any opportunity to the petitioner to represent his case. On this short

ground, I am inclined to quash impugned orders Annexure-A and B. The charge sheet issued by the respondents to the petitioner is for the purpose of holding the inquiry and to ascertain whether any order of penalty is required to be passed against the petitioner, if the charges are proved. In my view, the question of recovery need not be linked with the outcome of the departmental inquiry. The right of the Government to seek recovery of any loss caused to the Government stands on a vastly different footing from seeking to impose any punishment on a Government servant on account of any conduct, which can be termed as misconduct, which might have resulted into such loss. As long as the Government is seeking simpliciter recovery of loss caused, and that there is no element of punishment, it would be open for the Government to pass appropriate orders after following principles of natural justice.

In the result, impugned orders at Annexures A and B are quashed and set aside. It will be open for the respondents to take fresh appropriate action in accordance with law, bearing in mind the observations made hereinabove. If ultimate result is adverse to the petitioner, needless to say it will be open for him to take such legal recourse as may be available under law.

With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

(AKIL KURESHI, J.)
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